



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: IBI Security Service, Inc.
File: B-228056
Date: September 2, 1987

DIGEST

1. Section 8(a) subcontracting program is a noncompetitive procedure established by statute, and contracting agencies' broad discretion to determine appropriateness of 8(a) award is not limited by regulations on small business set-aside procurements.

2. Allegation that Small Business Administration did not perform proper study of impact of 8(a) subcontract on incumbent small business is denied where impact study furnished by agency shows that proper study was made and that 8(a) decision is consistent with findings.

DECISION

IBI Security Service, Inc. protests that the Internal Revenue Service (IRS) has arranged to contract with the Small Business Administration (SBA) under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1982), for guard services at IRS' Austin Service Center, Texas. Section 8(a) authorizes SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. We deny the protest in part and dismiss it in part.

IBI, a small business concern which is the incumbent contractor for this requirement, first complains that in letting an 8(a) contract to SBA, IRS failed to comply with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.502-2 (1986), requiring that a procurement be set aside for competition from small business concerns if the contracting officer determines that there is a reasonable expectation that offers will be obtained from at least two responsible small business concerns, and that an award will be made at a reasonable price. This so-called "rule of two" does not limit the contracting agency's authority to make noncompetitive awards under section 8(a) and other programs expressly authorized by statute. Rather, SBA and the

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contracting agencies have broad discretion in deciding the appropriateness of 8(a) contracting arrangements. RAI, Inc., B-222610, Aug. 5, 1986, 86-2 CPD ¶ 156. Thus, the award of an 8(a) contract here is not inconsistent with small business set-aside requirements.

The protester also complains that SBA did not properly perform a study to determine whether accepting the procurement for an 8(a) award would have an adverse impact on IBI, an individual small business. In this regard, SBA regulations provide that SBA will presume an adverse impact on small business concerns, and not accept a procurement for the 8(a) program, where a small business concern has been the recipient of two or more consecutive awards of the services within the last 24 months and the estimated dollar value of the award would be 25 percent or more of its most recent annual gross sales. 13 C.F.R. § 124.301(b)(8)(iv) (1987). This contention also is without merit.

We have obtained a copy of the impact determination made by SBA, which was based on information solicited from IBI. The determination clearly shows that SBA was aware of IBI's incumbency, but that IBI had only received one award in the last 24 months and that an 8(a) award would affect less than 25 percent of IBI's annual gross sales.^{1/}

Lastly, in a letter submitted 11 working days after the initial protest, IBI asserts that it is a small disadvantaged business concern and that SBA regulations provide that a procurement will not be accepted for an 8(a) award if there is a reasonable probability that such a concern, whether or not an 8(a) concern, can successfully compete for the contract under conventional competitive procedures. 13 C.F.R. § 124.301(b)(8)(iii). Our Bid Protest Regulations require that such a protest be filed not later than 10 working days after the basis for protest was known or should have been known, whichever was earlier. 4 C.F.R. § 21.2(a)(2) (1987). Thus, this last basis for protest is untimely since it was filed more than 10 working

^{1/} IBI's disagreement with SBA appears to be based on the value of the proposed 8(a) award. While the proposed award only involves a portion of the work covered by its prior contract, the protester apparently uses the total value of the prior contract to arrive at an estimated adverse impact exceeding 25 percent.

days after the initial protest, which clearly indicated that IBI was aware of SBA's decision to accept the procurement for an 8(a) award.

The protest is denied in part and dismissed in part.

for *Lequon Epos*
Harry R. Van Cleve
General Counsel